

## **LEONORA DUEÑAS, IRENEO ENDAYA, HILDA PENILLA, JENELYN BAYRON AND LANIE MEMBERS: EVARESTO, PETITIONERS, VS. HON. KEVIN NARCE VIVERO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH...**

Ponente: GARCIA-FERNANDEZ, J.

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### **GARCIA-FERNANDEZ, J.:**

This is a petition for certiorari under Rule 65 of the Revised Rules of Court seeking to annul and set aside the order dated March 15, 2010 granting the motion for writ of execution pending appeal and order dated March 22, 2010 denying the motion for reconsideration which were issued by public respondent judge of the Regional Trial Court (RTC), Branch 71 of Antipolo City, Rizal Province in SCA Case No. 09-882.

In Civil Case No. 118-07 before the Municipal Trial Court in Cities (MTCC), Branch I of Antipolo City, private respondent Amelita De Leon filed a complaint for unlawful detainer against petitioners Leonora Dueñas, Ireneo Endaya, Hilda Penilla, Jenelyn Bayron and Lanie Evaresto, and another group of defendants represented by Atty. Leandro Cedo. On May 19, 2009, the MTCC rendered a decision in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Amelita L. De Leon and against defendants Ronald Agcaoili, Angel Burger, Arnold Apuyan, Emma Arajo, Mercedita Canon, Elemer Camacho, Leonora Dueñas, Constantino Dullas, Lailani Dullas, Zandro Dullas, Ireneo Andaya, Esteban Esteban, Ernesto Evangelista, Pedro Festijo, Ireneo Jayaon, Larry Marina, Isagani Matibag, Edna Millamina, Concepcion Monterola, Rosario Noble, Antonio Pama, Hilda Penilla, Ariel Ronquillo, Leonila Ronquillo, Melanie Ronquillo, Ryna Ronquillo, Ronald Santiago, Jemitibo Suarez, TIB Pharmacy, Goldy Tobutino, Michelle Tor, Marcelo Umali and Rico Vibar, and all persons claiming rights under them, and the latter are hereby ordered the following:

1. To vacate the subject property located at Block 3, Lot 5 Brgy. Mambagan, Antipolo City covered by TCT Nos. R-41845, R-41846 and R-41848, and surrender the peaceful possession thereof to the plaintiff;
2. To pay plaintiff a monthly rental of P5,000.00 per defendant or per structure in case a defendant erected more than one structure, on the subject property from December 5, 2006, except Ronald Agcaoili, Pedro Festijo, Isagani Matibag, Antonio Pama, Ronald Santiago, Angel Burger and TIB Pharmacy, who shall start on February 27, 2007, until the same is fully vacated;
3. To pay Attorney's fees in the amount of P20,000.00; and
4. To pay the cost of suit.

SO ORDERED."[1]

On June 9, 2009, petitioners filed a Notice of Appeal and Omnibus Motion for Exemption From Payment of Appeal/Docket Fee, Deposit For Costs and Other Lawful Fees and For Exemption From Posting of Appeal

Bond.[2]

On June 16, 2009, the MTCC issued an order resolving the omnibus motion as follows:

"xxx Finding the motion to be impressed with merit as they are provided under Supreme Court Administrative Circular No. 35-2004 and that sufficient evidence were submitted to warrant the same, the motion of defendants for exemption of payments of lawful fees in connection with the appeal of the adverse decision to the Regional Trial Court is granted.

Defendants however are cautioned that they should post the required supersedeas bond to stay the execution of judgment rendered against them on May 19, 2009.

SO ORDERED."[3]

On July 24, 2009, private respondent filed a motion for issuance of writ of execution pending appeal in Civil Case No. 09-882 before the public respondent.[4] Attached to the private respondent's motion were two (2) separate certifications issued on July 16, 2009 and July 20, 2009 by the Office of the Clerk of Court (OCC) of the MTCC and RTC of Antipolo City respectively, stating that no supersedeas bond and/or monthly rentals had been paid by the defendants (petitioners) pertaining to the decision dated May 19, 2009 in SCA Case No. 118-07 entitled "Amelita L. De Leon vs. Rolando Agcaoili, et al."[5]

On March 15, 2010, public respondent issued the assailed order granting the motion for writ of execution pending appeal on the ground of failure on the part of petitioners to post the required supersedeas bond and/or pay monthly rentals. The said order stated that issuance of the writ of execution is without prejudice to resolution on the merits of petitioners' pending appeal.[6]

On April 6, 2010, petitioners moved for reconsideration of the order granting the writ of execution pending appeal. In their motion, petitioners contended that they were exempt from posting the required supersedeas bond pursuant to MTCC order dated June 16, 2009.[7] On March 22, 2010, public respondent issued the order denying the motion for lack of merit.[8] Thereafter, public respondent issued a writ of execution dated April 14, 2011 and notice to vacate and leave premises dated April 15, 2011.[9]

Aggrieved, petitioners filed the instant petition for certiorari premised on the issue that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed order, which granted the motion for issuance of a writ of execution pending appeal.[10]

The general rule in ejectment proceedings is that the decision in favor of the plaintiff is immediately executory. The plaintiff is entitled to reacquire possession of the subject property after the trial court rules in his favor, in order to prevent further damage to him arising from the loss of possession of the property in question. To stay the immediate execution of the judgment while the appeal is pending, the following requisites must concur: (1) the defendant perfects his appeal; (2) he files a supersedeas bond; and (3) he periodically deposits the rentals which have become due during the pendency of the appeal. These requisites are mandatory and concurrent. Thus, if not complied with, execution will issue as a matter of right.[11] The applicable provision under the Rules of Court, as amended, is Sec. 19 of Rule 70 which reads:

"Sec. 19. Immediate execution of judgment; how to stay same.—If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. x x x"

In this case, no grave abuse of discretion amounting to lack or excess of jurisdiction attended the issuance of the assailed order dated March 15, 2010. Public respondent correctly granted the motion for execution pending appeal considering that petitioners failed to post the required supersedeas bond and/or pay monthly rentals to stay immediate execution of the MTCC decision dated May 19, 2009. The Offices of the Clerk of Court of both the MTCC and RTC issued certifications ascertaining this fact. Moreover, contrary to petitioners' contention that order dated June 16, 2009 exempted them from posting a supersedeas bond, this Court finds that the exemption under the said order merely covered docket and other legal fees in filing their appeal as indigent litigants. The order was explicit in requiring petitioners to post the necessary bond to stay execution of the judgment rendered against them.

It bears emphasis that a supersedeas bond in ejectment cases subsists as security for the liability of the defendant to the plaintiff.[12] It secures the payment of the rents and damages adjudged in the appealed judgment. The supersedeas bond and the monthly deposits are primarily designed to ensure that the plaintiff would be paid the back rentals or the compensation for the use and occupation of the premises, should the inferior court's decision in his favor be affirmed on appeal. Hence, if no bond was filed or no monthly deposit was made, the plaintiff is entitled to the possession of the premises. To allow the defendant in an ejectment case to continue his possession without any security for the rentals would be prejudicial to the plaintiff. He might not be able to recover the back rentals when the judgment in his favor becomes final and executory. In that event, his claim for rentals would be illusory and ineffectual.[13]

Public policy dictates that ejectment cases must be resolved with the least possible delay, and judgments rendered in favor of plaintiff be immediately executed.[14]

WHEREFORE, the petition for certiorari is DISMISSED.

**SO ORDERED.**

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

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[1] Rollo, pp. 236-242.

[2] Id. at pp. 243-244; 245-249.

[3] Id. at p. 270.

[4] Id. at pp. 271-275.

[5] Id. at pp. 276 & 277.

[6] Id. at pp. 40-41.

[7] Id. at pp. 54-56.

[8] Id. at pp. 36-38.

[9] Id. at pp. 340-341 & p. 339.

[10] Id. at p. 15.

[11] Republic of the Philippines (represented by the Philippine Orthopedic Center) and Victor S. Clavel ?vs.?Spouses Jose and Amelia Luriz, G.R. No. 158992, January 26, 2007.

[12] Vicky C. Mabanto vs. Judge Mamerto Y. Coliflores, Adm. Matter No. MTJ-04-1533, January 28, 2008.

[13] Victor Ricafort vs Judge Rogelio Gonzales, Adm. Matter No. RTJ-03-1798, September 7, 2004.

[14] Note 11.

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